IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 1ST JANUARY 2007 / 11TH POUSHA, 1928

OP.No. 15751 of 2002(S)

PETITIONER:

P.KRISHNANKUTTY, KRISHNALAYAM,
KOTTUKALKONAM, KATTACHALKUZHI P.O.,
KOTTUKAL VILLAGE, ANTHIYOORDESOM,
TRIVANDRUM DISTRICT.

BY ADV. SRI.S.JAMES VINCENT
SRI.V.J.JAYAKUMAR ABRAHAM

RESPONDENTS:
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1. THE STATE OF KERALA, REPRESENTED BY
THE PRINCIPAL SECRETARY TO GOVERNMENT,
REVENUE DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE KERALA LOK AYUKTA,
LEGISLATIVE COMPLEX, TRIVANDRUM.

3. THE DISTRICT REGISTRAR,
TRANSPORT BHAVAN, FORT, TRIVANDRUM-23.

4. THE DIRECTOR OF HIGHER EDUCATION,
HOUSING BOARD BUILDING, SANTHI NAGAR,
TRIVANDRUM.

5. THE DISTRICT EDUCATIONAL OFFICER,
NEYYATTINKARA, TRIVANDRUM DISTRICT.

6. KOTTUKALKONAM HINDU NADAR MAHAJANA
SANGHOM, (REG.NO.30/69), ANTHIYOORMEKKUMKARA,
KATTACHALKUZHI P.O., VIA-BALARAMAPURAM,
TRIVANDRUM DISTRICT, REPRESENTED BY THE PRESIDENT.

7. P.KUNHIKRISHNAN NADAR, KRISHNA SADANAM,
PLAVILA, THANNIMOODU P.O., VIA-BALARAMAPURAM,
TRIVANDRUM DISTRICT.

8. B.APPU, BEENA BHAVAN, KOTTUKALKONAM,
KATTACHALKUZHI P.O., VIA-BALARAMAPURAM,
TRIVANDRUM DISTRICT.

R8 BY ADV. SRI.G.S.REGHUNATH
R1 TO R4 BY GOVT. PLEADER SMT.LAKSHMI RANI

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NOS.26585/02, 9587/03 AND I.A.NOS.10663 & 10664 OF 2005 IN OP NO.15751 OF 2002

//DISMISSED//

01.01.2007. SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE

APPENDIX

PETIITONER'S EXHIBITS:

EXT.P1: PHOTOCOPY OF JUDGMENT DATED 13.6.2000 IN O.S.NO.3/89 OF THE DISTRICT COURT, TRIVANDRUM.

EXT.P2:PHOTOCOPY OF THE PETITION DATED 2.2.2001 SUBMITTED BY THE PETITIONER AND TWO OTHERS TO THE DISTRICT REGISTRAR, TRIVANDRUM.

EXT.P3: PHOTOCOPY OF PETITION DATED 23.8.2001 SUBMITTED BY THE PETITIONER TO THE GOVERNMENT.

EXT.P4: PHOTOCOPY OF COMPLAINT NO.157/01 FILED BY THE PETITIONER BEFORE THE KERALA LOK AYUKTA ON 10.5.2001.

EXT.P5: PHOTOCOPY OF COUNTER AFFIDAVIT FILED BY THE DISTRICT REGISTRAR ON 21.4.2001 IN DO.

EXT.P6: PHOTOCOPY OF ORDER DATED 1.10.2001 OF THE LOK AYUKTA.

EXT.P7: PHOTOCOPY OF LETTER NO.M-1/682/98 DATED 8.1.02 ISSUED BY THE DISTRICT REGISTRAR.

EXT.P8: PHOTOCOPY OF COMPLAINT NO.299/02 FILED BY THE PETITIONER BEFORE THE LOK AYUKTA ON 19.3.2002.

EXT.P9: PHOTOCOPY OF INTERLOCUTORY APPLICATION FILED IN COMPLAINT NO.157/01 ON 20.3.2002.

EXT.P10: PHOTOCOPY OF ORDER DATED 17.5.2002 ISSUED BY THE LOK AYUKTA.

EXT.P11: PHOTOCOPIES OF THE MINUTES AND RESOLUTION OF THE GENERAL BODY MEETING OF THE SOCIETY HELD ON 19.5.02 AND ITS ENGLISH TRANSLATION.

RESPONDENT'S EXHIBITS:

EXT.R8(a): TRUE COPY OF THE MINUTES OF THE MEETING HELD ON 25.12.1995.

EXT.R8(b): TRUE COPY OF THE RELEVANT PAGES OF THE EXECUTIVE COMMITTEE MEETINGS HELD ON 21.1.1996, 18.2.1996, 3.3.1996 AND 31.3.1996.

EXT.R8(c): TRUE COPY OF THE MINUTES OF THE MEETINGS HELD ON 21.7.96, 25.7.96, 18.8.96, 22.9.96, 6.10.96, 27.10.96, 26.11.96, 15.12.96 AND 16.12.96.

EXT.R8(d): TRUE COPY OF THE RELEVANT PAGES OF MINUTES DATED 11.5.1997.

ANNEXURE A1: TRUE COPY OF SALE DEED NO.249/1980 DT.15.12.1980 OF VENGANOOR SUB REGISTRY.

ANNEXURE A2: TRUE COPY OF SALE DEED NO.165/1982 DT.23.1.1982 OF THE VENGANOOR SUB REGISTRY.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J

O.P.No.15751 OF 2002

Dated this the 1st day of January, 2007

JUDGMENT

1. The 6th defendant is a society registered under the Travancore-Cochin Literary Scientific and Charitable Societies Registration Act, 1955, hereinafter referred to as the 'T.C.Act'.

2. The petitioner made Ext.P3 complaint before the Government requesting action in relation to the said society under Section 19 of the T.C.Act. By Ext.P7, the District Registrar informed the petitioner that he is unable to proceed with any inquiry since the President of the society had pleaded inability to produce the records, which were then stated to be in the custody of the civil court and that adjournment was sought for to produce the documents. The District Registrar dismissed Ext.P3 complaint by taking the view that he is unable to keep the proceedings further alive since there is a direction by the Upa Lok Ayukta to consider Ext.P3. The fact remains that Ext.P7 does not contain any consideration of Ext.P3 complaint,

whatever be its worth.

3. The petitioner appears to have raked up the correctness of Ext.P7 decision before the Lok Ayukta, which ultimately ended in Ext.P10 order by the Lok Ayukta, concluding that a society registered under the Act does not fall within the jurisdiction of the Lok Ayukta.

4. This writ petition is filed challenging Ext.P7 decision of the District Registrar as also Ext.P10 decision of the Lok Ayukta.

5. Ext.P10 decision of the Lok Ayukta cannot be found fault with in as much as the petitioner is unable to point out any provision of the Kerala Lok Ayukta Act, 1999, under which a society registered under the T.C.Act is amenable to its jurisdiction. Thus the challenge against Ext.P10 has necessarily to fail.

6. Section 19 of the T.C.Act confers power on the Government to

call for accounts and inspection of books etc. The Government may, at any time, call upon the Governing Body of the society to submit periodical accounts of income and expenditure and of assets and liabilities of the society. The Registrar or any other officer authorised by the Government shall periodically examine the accounts and other books of the society and submit report to the Government on the result of such inspection. The inspecting officer has the power of entry in the course of such inspection and the Governing Body and the servants of the society are bound to furnish information to the inspecting officer. Sub Section (2) of Section 19 confers on the inspecting officer the power to seize the books as also to conduct search in situations envisaged therein. Sub Section (3) of Section 19 provides that the Government may, for the efficient and better management of the society, review the reports submitted under Section 19 (1) and pass such orders as it deem fit. However, while the Government are empowered to pass such orders for the efficient and better management of the society, it is precluded from issuing any

order that would fall within clauses (a) to (c) of Sub Section (1) of Section 25, which are those that could be passed by the District Court on an application to that court for dissolution, framing a scheme etc. in terms of Section 25 of the T.C.Act. A conjoint reading of Sections 19 and 25 will show that the Government are vested with all the powers to pass such orders as are necessary for the efficient and better management of the society, except any order of the nature provided in clauses (a) to (c) of Sub Section (1) of Section 25. The scheme of Section 19, as a whole, provides the ways and means for the Government to reach at the required reports for assessment of the situation in relation to any society in question. All that it cannot do is removal of existing Governing Body and appointment of fresh Governing Body or framing a scheme for the better and efficient management of the society or dissolving the society, which matters fall within the exclusive domain of the authority of the District Court in terms of Section 25 of the T.C.Act.

7. The power under Section 19 (3) has necessarily to be exercised on the basis of accounts of income and expenditure and of assets and liabilities of the society, which are required to the periodically submitted as and when called for by the Government. The Registrar is duty bound under Section 19 (1) to periodically examine the accounts and other books of the society and submit report to the Government on the result of such inspection. Thus the powers under Section 19 (3), which the Government may exercise, has to be on the basis of and after obtaining the report of the Registrar or the authorised officer in terms of Section 19 (1). This essentially settles the division of power between the Government and the Registrar, that is to say; while the Registrar has the power of search, seizure, inspection and the making of report, he would not have authority to pass any order in terms of Section 19 (3), which is within the exclusive domain of the Government while it acts on the reports of the Registrar of the authorised officer. So much so, the power of the Government under Section 19 (3) cannot also be delegated to the Registrar. That apart, there is

no empowering provision in the T.C.Act, by which, any of the statutory powers of the Government under the T.C.Act could be delegated to the Registrar or any other officer. So much so, the dismissal of Ext.P3 complaint of the petitioner before the Government by the District Registrar as per Ext.P7 is wholly without authority. All that the Registrar could have done was to report to the Government that he was unable to have any inspection conducted.

8. It is pointed out that the 6th respondent society runs a school and has a temple. It apparently reflects the ideals and ideologies of a particular community. So much so, it is also the requirement that transparency in the working of such a society is ensured and the Government are duty bound under Section 19 to ensure that necessary reports are obtained to ascertain whether any further action is required at its hand. Helplessness pointed out by the Registrar in Ext.P7 is the pendency of the documents with the civil court. This, I may notice at once, was obviously because of the pendency of

O.S.3/89 before the District Court, Trivandrum, which has now metamorphosed into A.S.615/00 of this Court. That suit is one filed invoking Section 96 of the Civil Procedure Code. I am not going into the details of that since, ultimately, the District Court came to the conclusion that the suit under Section 92 is not maintainable and dismissed it. This is how A.S.615/00 is pending before this Court.

9. Be that as it may, it is the requirement that a final decision is taken by the Government as contemplated by Section 19 (3) and by following the due procedure as envisaged therein in relation to Ext.P3 complaint. This is the minimum requirement that has to be ensured by those concerned in the enforcement of the T.C.Act.

10. Under the aforesaid circumstances, Ext.P7 is quashed and it is directed that the Government shall take up Ext.P3, obtain necessary reports from the District Registrar and take a final decision on Ext.P3, after hearing the necessary parties. It

should be open to the contesting respondents now in office to point out that Ext.P3 itself is not maintainable and it is beyond the parameters of Section 19 of the Act and still further, that the petitioner either does not have the locus standi or has tainted hands in pursuing the case of the 6th respondent society. Whatever that be, a final decision has to be given and having regard to the facts and circumstances, it is absolutely necessary that a final decision is taken by the competent authority in the Government within a period of six months from now. It is further clarified that such decision shall be taken untrammeled by anything stated in this judgment or in Ext.P7 or in Ext.P10. The parties who have produced documents before the civil court will apply for issuance of its certified copies from this Court (in A.S.No.615/00, since Lower Court Records are already received) for production before the competent officer in terms of Section 19 (1).

11. Following this judgment, the parties will appear before the Chief Secretary to obtain appropriate date of posting and the

identity of the officer who will hear the parties on behalf of the Government. The parties shall so appear on 10.1.2007 and the Government will treat the time frame fixed above as peremptory, having regard to the interest of the 6th respondent society.

The writ petition is disposed of in the above terms.

Incorporate a copy of this judgment in the file of A.S.No.615/00 of this Court.

THOTTATHIL B.RADHAKRISHNAN
Judge

kkb.

Page numbers

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JUDGMENT

1st JANUARY, 2007.

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